

ESTATE OF H. JAMES ROSS : Order Affirming Decision  
:  
: Docket No. IBIA 93-73  
:  
: December 16, 1993

Appellant Sharon Phillips seeks review of a March 23, 1993, order denying reopening issued by Administrative Law Judge Robert A. Yetman in the Estate of H. James Ross, IP DE 36E 72-921. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

H. James Ross, OS-4984 (decendent), died testate on August 16, 1971. A hearing to probate his trust or restricted estate was held by Hearing Examiner Merritt L. Gordon on October 20, 1971. In a March 29, 1972, order, Examiner Gordon determined that decedent's heirs were his wife, Maude Ross, and daughter, Rachelle Sophia Wilcox (Wilcox); and approved decedent's will, under which Maude Ross took all of decedent's estate.

On August 19, 1992, the Superintendent, Pine Ridge Agency, Bureau of Indian Affairs (Superintendent), filed a petition to reopen decedent's estate. <sup>1/</sup> As grounds for reopening, the Superintendent stated that newly discovered evidence presented by appellant indicated that decedent was appellant's natural father. The evidence consisted of statements from friends and relatives of appellant's mother, Emma Shelton (Shelton), to the effect that Shelton's husband, Fred Shelton, who was listed as appellant's natural father, was not in fact her father. The statements suggested that decedent was appellant's natural father. The petition also indicated that appellant was attempting to be enrolled in the Oglala Sioux Tribe, and that reopening and "a final determination as to her natural father, [would] assist her in enrollment purposes."

Judge Yetman denied reopening on March 23, 1993. The order states at pages 1-2:

The Superintendent filed the petition to obtain a declaration from this Tribunal that the decedent was the father of [appellant]. According to the Superintendent, [appellant] has applied for enrollment with the Oglala Sioux Tribe. However, her

---

<sup>1/</sup> Wilcox opposed reopening. In her brief to the Board, Wilcox argues that the Superintendent was not a proper party to seek reopening. The Board has held otherwise. See Estate of Paul Widow, 17 IBIA 107, 113 (1989); Estates of Walter George & Minnie Racehorse George Snipe, 9 IBIA 20 (1981).

natural mother, x/ Emma Shelton, who is a member of the tribe, refuses to talk to [appellant] or acknowledge her as her daughter. Therefore, in order to qualify [appellant] as a member of the tribe, the Superintendent seeks to have her declared as the daughter of decedent, who was also an Oglala Sioux. The affidavits of three people have been submitted in support of the petition. Each of the affidavits state that the affiant is a long time acquaintance of [appellant] and it was common knowledge that the decedent was her father. There is nothing filed in support of the petition indicating that the decedent acknowledged [appellant] as his daughter. On the other hand, the copy of [appellant's] birth certificate attached to the petition lists Fred Shelton as her natural father.

A[n] opposition to the petition was filed on behalf of [Wilcox], decedent's sole surviving heir. The opposition contains inter alia, the affidavit of Emma Maree Shelton, the undisputed natural mother of [appellant]. Ms. Shelton states that, decedent ". . . was not, could not have been [appellant's] father". She reaffirms that Fred Shelton was the natural father of [appellant].

Although there is conflicting evidence in the various submissions regarding the "common knowledge" in the community where decedent and [appellant] lived, there is no need to test the credibility of those witnesses where, as in this case, there is unrefuted direct testimony and documentation regarding the paternity of [appellant]. [Appellant's] birth certificate and her mother's affidavit clearly and unequivocally establish[] that Fred Shelton, not the decedent, was the natural father of [appellant].

---

x/ [Appellant] was adopted by Grant and Elizabeth Porter when she was an infant.

Appellant appealed from this decision. Her notice of appeal states in its entirety:

I, Sharon Porter Phillips, 53 was given up for adoption at birth by Emma Shelton. She will not tell me the truth who my real father is. I know for a fact that the only man she was married to was Fred Shelton and he had divorced her and left the Martin area. He moved to Iowa years before my birth making it impossible that he could be my father. I was informed by five other parties that Emma Shelton was having an affair with her uncle by marriage. I feel myself and my brother, Jim Shelton, was fathered by Jim Ross (Uncle). Due to the nature of their relationship as in-laws, I feel that is the reason for her denying he is my father.

Emma Shelton has lived this story for 53 years and refuses to admit to anything different. My brother and myself have the same physical build and facial characteristics.

It is very important to me to establish my degree of blood line, as I feel I have a right to know my true identity. I am not out to hurt anyone or establish any assets. Also, due to medical reasons, I feel it is extremely important to know what my natural family background really is.

I appreciate your consideration in taking the time in this matter as I have worked for the past seven years on this situation. I would like to put it to rest and have a peace of mind about my true natural father.

Appellant did not file a brief on appeal. Her appeal was opposed by Wilcox.

Appellant bears the burden of proving the error in the decision from which she is appealing. Estate of Thomas Sun Goes Slow, 23 IBIA 99, 100 (1992), and cases cited therein. Appellant's notice of appeal presents nothing beyond what was considered by Judge Yetman. The speculations of appellant and community members concerning the relationship between her mother and decedent do not outweigh the evidence of her birth certificate and her mother's statements that her father was Fred Shelton.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the secretary of the Interior, 43 CFR 4.1, Administrative Law Judge Yetman's March 23, 1993, order denying reopening is affirmed.

---

Kathryn A. Lynn  
Chief Administrative Judge

---

Anita Vogt  
Administrative Judge